IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.367 OF 1993.

The State of Maharashtra .. Appellant

vs.

Sudam D. Malve ..Respondent

Shri S.N.Gawade, A.G.P. for the State.

K.S.Patil with P.N.Joshi, for the Respondent.

CORAM : D.G.DESHPANDE, J.

DATED : 20th january, 2005.

P.C. :

1. Heard the learned AGP for the State and the Mr. Joshi for the respondent. This appeal is filed by the State challenging the enhancement of compensation from Rs.1.5 per sq.mt as awarded by the SLAO to Rs.45/- per sq.mt as awarded by the lower Court by order dated 16.3.1991 of the Joint District Judge, Nasik.

2. The APP contended that the two sale instances relied upon by the claimant should not have been taken the basis for enhancing the compensation because firstly those sale instnces are related to gavthan area where facilities like road, highway and electricity were available. Whereas those facilities were not available to the acquired land.

3. As against this, the Counsel for the respondent pointd out that the State has examined two witnesses to prove the two sale instances. The relevant period is around 1980. The notification under section 4 is of 11.9.1980, the date of award is 29.8.1983, the land acquired is 9 acres from village Aangangaon. The advocate for the respondent urged that those two witnesses examined on behalf of the State has supported the case of the claimant that the claimant’s land was developed and was within the area of Yeole Municipal Council.

4. The claimant has examined himself and has stated that the land is within Yeole Municipal

Council. He has converted the portion of his land to N.A. He had leased some portion for the match factory. There is Arts and Commerce College and Janata Vidyalaya adjacent to the boundary of his village. The Nasik Aurangabad Highway runs east west and his land is to the norht of the highway. There are housing societies to the south of the road infront of his land. There is irrigation colony and rest house also. Beyond that there is MIDC.

5. The Advocate for the Respondent also contended that even though in the two sale instances proved by the claimant the land was gaonthan and had all the facilities. The prices given by the purchasers in these two sale instances namely exhibit 16 and 23 were Rs.64.10ps per sq.mt and Rs.94.93 per sq.mt. But the Court has, after taking into consideration the difference in the type and nature of the land, awarded compensation at Rs.45/- only. He, therefore, contended that there is no need for further reduction nor any case is made out in that regard.

6. It is therefore clear that the lower Court found out the mean or medium to fix the price, giving concession to all the minus factors, as referred to exhibit 16 and 23 and the land acquired was 9 acres i.e.900 sq.mt and therefore fixed the compensation at 40,500/-. There is no merit in this appeal. Same is dismissed. No order as to costs.

20.01.2005 (D.G.Deshpande, J.)